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CLIENT/MATTER NUMBER
081170-0178

MEMO ENDORSED

VIA FACSIMILE AND OVERNIGHT DELIVERY

The Honorable Denny Chin
United States District Court Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1020
New York, New York 10007-1312

USDC SDNY
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Re: Consolidated Edison Co. v. UGI Utilities, Inc., No. 01-CIV 8520

Dear Judge Chin:

Earlier this year, this Court, pursuant to the parties' agreement, informally stayed further proceedings in this case pending the United States Supreme Court's disposition of UGI Utilities, Inc.'s petition for certiorari. As we previously informed Your Honor, UGI filed its certiorari petition on April 14, 2006, Consolidated Edison filed a response to the petition on June 2, and UGI filed a reply brief on June 12. In anticipation of the Supreme Court's consideration of the petition at the Court's September 25, 2006, conference, UGI filed a supplemental brief advising the Supreme Court that, after UGI filed its reply brief, the Third Circuit expressly rejected the Second Circuit's holding in this case, see *E.I. DuPont de Nemours & Co. v. United States*, 2006 WL 2474339 (3d Cir. Aug. 29, 2006), while the Eighth Circuit ruled in accordance with the decision by the Court of Appeals here, see *Atlantic Research Corp. v. United States*, 2006 WL 2321185 (8th Cir. Aug. 11, 2006).

On October 4, 2006, the Supreme Court issued an order inviting the Solicitor General of the United States to file a brief expressing the United States' views on whether UGI's petition should be granted. See Order List, p.5-6, Orders in Pending Cases, *UGI Util., Inc. v. Consol. Edison Co. of N.Y., Inc.*, No. 05-1323 (S. Ct. Oct. 2, 2006), available at <http://www.supremecourtus.gov/orders/courtorders/100206pzor.pdf>. As UGI has informed the Supreme Court in its petition and briefs, the United States Department of Justice has argued to the Third, Seventh, and Eighth Circuits that the Second Circuit's decision from which UGI seeks certiorari incorrectly construes CERCLA § 107. While the Supreme Court's order does not contain a deadline for the Solicitor General to file his brief, we expect that he will do so in time to permit the Court to decide later this Term whether to hear the case.

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Under the circumstances, we believe it likely that the Supreme Court will grant the writ of certiorari UGI requested and will consider whether to reverse the Second Circuit's decision. A reversal of that decision will eliminate any need for additional proceedings by this Court, thereby conserving both the Court's and the parties' resources. What is more, neither party will be prejudiced by this additional delay, even were the Court to deny review or to affirm the Second Circuit's decision. Accordingly, UGI and (as a result of a conversation today with Consolidated Edison's counsel, Andrew Cooper) Consolidated Edison respectfully request that the Court continue the informal stay of these proceedings until the Supreme Court rules on UGI's petition.

UGI will promptly notify this Court of the Supreme Court's ruling on the petition. It will also provide any other reports on the petition's status that this Court deems desirable.

Sincerely,

Jay N. Varon
Counsel for UGI Utilities, Inc.

cc: Andrew Cooper, Esq.

This case is STAYED until the Supreme Court rules on UGI's petition. The case will be placed on the Court's suspense docket pending a request from either party for reinstatement to the active docket.
SO ORDERED.

10/6/00

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